

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

vs.

Case No. 8:03-CR-77-T-30TBM

GHASSAN ZAYED BALLUT  
\_\_\_\_\_ /

**DEFENDANT GHASSAN BALLUT'S MOTION TO SUPPRESS  
FISA INTERCEPT EVIDENCE AND MEMORANDUM OF LAW**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, pursuant to Federal Rule of Criminal Procedure 12(b)(3)(C) and 12(c) and 50 U.S.C. § 1806(e) and (g), hereby requests this Honorable Court to suppress the evidence obtained through the interception of the Defendant's wire communications with the named Co-Defendants as described below, and as grounds therefor states:

1. In the Overt Acts of Count One of the Superseding Indictment filed in this cause, the Defendant is described as participating in several telephone conversations or other wire communications such as facsimiles with Co-Defendants SAMI AMIN AL-ARIAN, RAMADAN ABDULLAH SHALLAH, and HATEM NAJI FARIZ, as specified in Overt Acts 97, 103, 168, 204, 206, 289, 291, 293, 295, 297, 299, 301, 302, 303, 306, 310, 312, 316, 318, and 320, and the Defendant's alleged statements during these same communications are generally described in each of these Overt Acts.

2. The Defendant by this Motion asks for the exclusion from evidence of his alleged statements in each and every of the above-enumerated telephone conversations or wire communications.

3. The Government has not provided any Rule 16(a)(1)(E) discovery that any telephone

or telephone line that was titled to, the property of, or in the possession of the Defendant was subject to wire interception authorized pursuant to the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1801 et seq., or 18 U.S.C. § 2518.

4. By having his part of each of these wire communications intercepted and recorded pursuant to FISA, the Defendant was a target of electronic surveillance and was also a person whose communications or activities were subject to electronic surveillance, and therefore the Defendant is an “aggrieved party” as defined in FISA at 50 U.S.C. § 1801(k) and has standing to bring this Motion to suppress these communications and activities.

5. At no time during the authorization or application process for the interception of these wire communications or during the interception of the Defendant’s wire communications did the Government know or have reason to believe that the Defendant was a “foreign power” or an “agent of a foreign power” as those terms are defined in FISA at 50 U.S.C. § 1801(a) and (b).

6. At all times pertaining hereto, the Defendant was and is a United States citizen and therefore was and is a “United States person” as defined in FISA at 50 U.S.C. § 1801(i).

7. The Defendant was at all times an “unconsenting United States person” as that term is used in the definition of the minimization procedures required by FISA at 50 U.S.C. § 1801(h)(1).

8. To the extent that any of the Defendant's wire communications were intercepted pursuant to the authorization of the Attorney General without a court order, the wire communications of the Defendant that were intercepted intermittently from 1994 through 2002 were subject to the one year limitation in FISA at 50 U.S.C. § 1802(a)(1) and were disallowed by the prohibition of acquisition of communications by United States persons in FISA at 50 U.S.C.

§ 1802(a)(1)(B).

9. To the extent that any of the Defendant's wire communications were intercepted pursuant to an application for a court order approving electronic surveillance pursuant to 50 U.S.C. § 1804(a), such application:

(1) failed to identify or describe the Defendant as a target of the electronic surveillance, or that the Defendant was a foreign power or the agent of a foreign power and that the facilities or places were used by a foreign power or an agent of a foreign power, as alternatively required by 50 U.S.C. § 1804(a)(3) and (4); and

(2) failed to sufficiently and properly certify that the information sought was "foreign intelligence information" (as defined in FISA at 50 U.S.C. § 1801(e)) as required by 50 U.S.C. § 1804(a)(7)(A), (B), and (E), the exclusion under 50 U.S.C. § 1804(b) not applying.

10. The intercepted wire communications of the Defendant in each of the above enumerated telephone conversations were by their nature and content protected by the First Amendment of the United States Constitution, and as the Defendant is a United States person as defined in FISA at 50 U.S.C. § 1801(i), the Defendant benefits from the protective exception in FISA at 50 U.S.C. § 1805(a)(3)(A), and therefore the necessary finding that the Defendant was a foreign power or an agent of a foreign power could not be lawfully made and thus there is insufficient support for any court order for electronic surveillance pursuant to 50 U.S.C. § 1804 directed at the interception of the Defendant's alleged statements.

11. As the Defendant was at all times an "unconsenting United States person," the Government failed to utilize the proper procedures to minimize the acquisition and retention, and

prohibit the dissemination, of nonpublicly available information concerning the Defendant as required in FISA at 50 U.S.C. § 1801(h)(1).

12. For each of the above-stated reasons, the interception of the Defendant's wire communications as alleged in each of the Overt Acts enumerated in paragraph 1 above was done in violation of the Defendant's right against unreasonable search and seizure as protected by the Fourth Amendment of the United States Constitution.

WHEREFORE, the Defendant requests this Honorable Court to suppress and exclude from evidence in the trial of this cause each and every one of the communications and statements made by the Defendant as alleged in Overt Acts 97, 103, 168, 204, 206, 289, 291, 293, 295, 297, 299, 301, 302, 303, 306, 310, 312, 316, 318, and 320 of the Superseding Indictment.

#### **Memorandum of Law**

Because the Defendant's alleged statements were intercepted as wire communications by the Government pursuant to the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1801 et seq., the Defendant is an "aggrieved party" as defined in FISA at 50 U.S.C. § 1801(k) and has standing to bring this Motion to suppress these statements. See United States v. Cavanagh, 807 F.2d 787, 789 (9th Cir. 1987); United States v. Belfield, 692 F.2d 141, 143, 146 n. 21 (D.C.Cir. 1982). This is true even though no telephone or other device owned or in the possession of the Defendant was the target of any application for interception under FISA. Id.

The Government has provided no discovery to the Defendant that his own telephones or other communication devices were targeted, and therefore this Motion is made with the assumption that the Defendant's alleged statements were obtained as the result of authorized

interceptions through the telephones or devices of other individuals. There is therefore no reason to believe that any of the required allegations made to obtain authorization to intercept wire communications included any statement regarding the Defendant as a “foreign power” or the “agent of a foreign power” as required in an application pursuant to FISA. 50 U.S.C. §§ 1801(a) and (b), 1804(a)(4).

It is acknowledged that the Defendant has been a United States citizen from a time prior to any of the substantive allegations in the Superseding Indictment. This means that the Defendant was and is at all times a “United States person” as defined in FISA. 50 U.S.C. § 1801(i). Further, as a United States citizen who did not agree to have his wire communications intercepted, the Defendant was at all times an “unconsenting United States person.” This term is used in the definition of the minimization procedures required by FISA. 50 U.S.C. § 1801(h)(1). To issue an order authorizing the wire interception, the court must make the necessary finding that the minimization procedures were followed. 50 U.S.C. § 1805(a)(4) The Government must comply with the minimization procedures to use the information obtained by the wire intercepts. 50 U.S.C. § 1806(a). As a result, the Defendant's statements were subject to the minimization procedures in FISA. To the extent that the alleged statements of the Defendant were not properly subjected to the minimization procedure, the Defendant has the right to contest the use of the wire communications in evidence. See United States v. Ott, 827 F.2d 473, 475-76 (9th Cir. 1987); 50 U.S.C. § 1806(e). The Defendant submits that the nature and content of the statements ascribed to the Defendant in the above-enumerated Overt Acts indicate that the minimization procedures were not followed. There is “nonpublicly available information” in the numerous statements assigned to the Defendant that establish that minimization procedures were

not followed.

The Defendant does not meet the definitions of a “foreign power” or “agent of a foreign power.” 50 U.S.C. §1801(a) and (b). The Defendant is not a government, faction, entity or organization, nor is he, as a United States citizen, alleged to have engaged in “clandestine intelligence activities” or “sabotage or international terrorism” (as defined at 50 U.S.C. § 1801(c)) or entered the United States under false or fraudulent identity or knowingly aided or abetted any such activity. 50 U.S.C. § 1801(b)(2). As a United States citizen, the Defendant cannot be considered the “agent of a foreign power” solely upon the basis of activities protected by the First Amendment of the Constitution of the United States. 50 U.S.C. § 1805(a)(3)(A). The Defendant could therefore never have been the target of an application for wire interception. As such, any communications ascribed to the Defendant should be regarded as lawful communication by a third party not targeted by the FISA application. To the extent that the Government may allege that the Defendant was targeted, there is insufficient support for any court order for electronic surveillance pursuant to 50 U.S.C. § 1804 directed at the interception of the Defendant’s alleged statements. Because all of the Defendant’s statements as alleged in the Superseding Indictment are protected by the First Amendment, the Defendant submits that these statements were improperly intercepted under FISA.

Because the Defendant is an aggrieved unconsenting United States citizen, and because his statements are protected by the First Amendment, and because his statements were not subjected to the proper minimization procedure, the statements ascribed to the Defendant in the above-enumerated Overt Acts were obtained in violation of the Defendant’s Fourth Amendment rights, are subject to suppression, and should be excluded from evidence in this cause.

Respectfully submitted,

/s Bruce G. Howie

Bruce G. Howie

Florida Bar No. 263230

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**Certificate of Service**

I HEREBY CERTIFY that on November 22, 2004, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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